# JF16 Kant Libertarianism

## 1NC

### Carded

#### The authority of reasons is implicit in all normative judgment. Any external source of authority can be questioned into regress— however, to ask “why reason?” is to ask a closed question.

Velleman (David, “Self To Self”, Cambridge University Press, 2006, pg 18-19)

As we have seen, requirements that depend for their force on some external source of authority turn out to be escapable because the authority behind them can be questioned. We can ask, “Why should I act on this desire?” or “Why should I obey the U.S. Government?” or even “Why should I obey God?” And as we observed in the case of the desire to punch someone in the nose, this question demands a reason for acting. The authority we are questioning would be vindicated, in each case, by the production of a sufficient reason. What this observation suggests is that any purported source of practical authority depends on reasons for obeying it—and hence on the authority of reasons. Suppose, then, that we attempted to question the authority of reasons themselves, as we earlier questioned other authorities. Where we previously asked “Why should I act on my desire?” let us now ask “Why should I act for reasons?” Shouldn’t this question open up a route of escape from all requirements? As soon as we ask why we should act for reasons, however, we can hear something odd in our question. To ask “Why should I?” is to demand a reason; and so to ask “Why should I act for reasons?” is to demand a reason for acting for reasons. This demand implicitly concedes the very authority that it purports to question—namely, the authority of reasons. Why would we demand a reason if we didn’t envision acting for it? If we really didn’t feel required to act for reasons, then a reason for doing so certainly wouldn’t help. So there is something self-defeating about asking for a reason to act for reasons.

#### Reasons must apply for every agent, since they are authoritative judgments of reality that possess no intrinsic quality that would cause them to differ between individuals.

#### **The exercise of reasons requires agency, but the genesis of such is intersubjective. The freedom of other agents is a necessary condition for the establishment of my own—willing the restriction of another’s freedom requires that I have a reason to deny my own, which is impossible.**

Neuhouser (Frederick Neuhouser, “Introduction to Foundations of Natural Right by Johann Fitche,” Cambridge University Press 2000)

The deduction's second theorem (§3) makes one of the Foundations's most original and exciting claims, and it is essential to Fichte's project of showing that rights are necessary conditions of self-consciousness. Its claim is that ascribing to oneself free efficacy (or agency) in the sensible world requires ascribing the same capacity to other rational beings. Fichte argues here that in order for a subject to be conscious of its own agency, it must first find that agency, as an object for its consciousness, in the external world. The thought here appears to be that the subject cannot come to an awareness of itself as practically free simply by seeing the results of its agency in the world, for in order to act freely, it would first have to know itself as free. The subject, then, must learn about its freedom in some other manner; it must somehow experience itself as free prior to any actual instances of its agency. Fichte's claim in §3 is that the only possible solution to this problem is to suppose that external evidence of one subject's agency is provided by another free subject. This occurs through a “summons” that one already formed subject makes to another. The summons is a call to act, a call to realize one's free efficacy, which takes the form of an imperative: You ought to "resolve to exercise your agency" (§3, III). Fichte concludes from this that the freedom of one subject (which includes consciousness of its freedom) requires the existence of others; free individuality is possible only in relation to other subjects, and so intersubjectivity is a necessary condition of self-consciousness. As Fichte sums up his result in the first Corollary to §3: "The human being . . . becomes a human being only among human beings;... it follows that if there are to be human beings, at all, there must be more than one. From here Fichte moves to the final step of the deduction of the concept of right (§4). Its claim is that positing the existence of other rational beings requires thinking of oneself as standing in a particular relation to them, a relation that turns out to be the "relation of right." The argument behind this claim is that in order to be conscious of myself as a free individual, I must be able to distinguish my own free agency from that of the other subjects whose existence I necessarily posit (as established in §3). According to Fichte, this requires "ascribing exclusively to myself a sphere for my free choice" (§4, II), a sphere to which other free beings have no access. But, given that I share the external world with other free beings, this is possible only if my individuality is recognized by those beings as setting limits to their own free agency. (And the same, of course, is required of me in relation to them if they are to attain consciousness of themselves as free individuals.) This recognition is more than just a theoretical acknowledgment of my status as a free being; it also requires that I be treated as such by other subjects or, in other words, that my free agency acquire a real and protected existence in the external world. But this is nothing more than the requirement that I possess a set of rights that are respected by others, which is what Fichte means by "standing in a relation of right" to other rational beings.

#### One can never restrict the ends a subject can set as their means, because to be human is to autonomously set the ends. To treat humanity as an end requires one to respect the legislative right of agents to use their means as they see fit free of domination.

Arthur Ripstein 09 [Professor of Law and Philosophy at the University of Toronto, and Chair of the Department of Philosophy], “Force and Freedom”, Harvard University Press, pgs 34-35, 2009

You are independent if you are the one who decides what ends you will use your means to pursue, as opposed to having someone else decide for you. At the level of innate right, your right to freedom protects your purposiveness—your capacity to choose the ends you will use your means to pursue—against the choices of others, but not against either your own poor choices or the inadequacy of your means to your aspirations. You remain independent if nobody else gets to tell you what purposes to pur- sue with your means; each of us is independent if neither of us gets to tell the other what purposes to pursue.¶ This right to independence is not a special case of a more general in- terest in being able to set and pursue your purposes. Instead, it is a dis- tinctive aspect of your status as a person in relation to other persons, enti- tled to set your own purposes, and not required to act as an instrument for the pursuit of anyone else’s purposes. You are sovereign as against others not because you get to decide about the things that matter to you most, but because nobody else gets to tell you what purposes to pursue; you would be their subject if they did. Thus Kant’s conception of the right to independence rests on neither of what is referred to in recent lit- erature as “interest theory” or “will theory” of rights.9 Underlying the other differences between these accounts is a shared conception of rights as institutional instruments that constrain the conduct of others in order to protect things that matter apart from them. Kant’s account identifies a right with the restriction on the conduct of others “under universal law,” that is, consistent with everyone having the same restrictions. Each per- son’s entitlement to be independent of the choice of others constrains the conduct of others because of the importance of that independence, rather than in the service of something else, such as an interest in leading a suc- cessful, worthwhile, or fully autonomous life. Those things can be speci- fied without reference to the conduct of others, and constraining the con- duct of others is, at most, a useful way of securing them. If rights are understood in this instrumental way, they are always at least potentially conditional on their ability to secure the underlying values that they are supposed to protect. The Kantian right to independence, by contrast, is always an entitlement within a system of reciprocal limits on freedom, and so can only be violated by the conduct of others, and its only point is to prohibit that conduct. The protection of independence and the prohibi- tion of one person deciding what purposes another will pursue stand in a relation of equivalence, rather than one of means to an end. As a result, the constraint a system of equal freedom places on conduct is uncondi- tional. An unconditional constraint does not preclude the possibility of hindering the action of a person, or even of using lethal force to do so, because the unconditional right is not a right to a certain state of affairs, such as the agent staying alive. Instead, it is a right to act independently of the choice of others, consistent with the entitlement of others to do the same. The principle of mutual restriction under law applies uncondition- ally, because it is not a way of achieving some other end.¶ Your sovereignty, which Kant also characterizes as your quality of being your “own master (sui juris),” has as its starting point your right to your own person, which Kant characterizes as innate. As innate, this right contrasts with any further acquired rights you might have, because innate right does not require any affirmative act to establish it; as a right, it is a constraint on the conduct of others, rather than a way of protecting some nonrelational aspect of you. It is a precondition of any acquired rights because those capable of acquiring them through their actions already have the moral capacity to act in ways that have consequences for rights, that is, for the conduct of others. That any system of rights presupposes some basic moral capacities that do not depend on antecedent acts on the part of the person exercising them does not yet say what the rights in question are, or how many such rights there might be.

#### Thus the standard is respecting freedom. This is a perfect duty—the NC is libertarianism. This negates since the government would not be legitimate in legislatively restricting end-setting capacity via a handgun ban.

#### Moreover, the mere ownership of handguns doesn’t constitute a violation to another’s independence. While it may alter the environment you exist in, I do not subject your means to my own end.

Ripstein, (Arthur Ripstein, “Beyond the Harm Principle,” University of Toronto, http://www.law.utoronto.ca/documents/Ripstein/beyond\_harm\_principle.pdf//FT

Sovereignty can only be violated by the intentional deeds of others, because it is an interest in independence of those deeds. Thus it cannot be treated as just another vulnerability, to be added to the harm principle’s catalogue of protected interests. All of those interests can be set back by a variety of things other than intentional wrongdoing. If I wrong you intentionally, I do so culpably, because I have made my use or damage of your powers the means through which I pursue my purposes. I use you as a means, or make your means my own. My use of you is objectionable even if you are merely incidental to my purpose: I grab you and push you out of the way, or vent my frustration by hitting you. In either of these cases, you are an unwilling party to the transaction: I force you to participate in my pursuit of my petty purposes, either by forcing you to stand where I want you to, rather than where you were, or by volunteering you as my punching bag. Either way, subjecting your choice to mine is the means I use to get what I want; my act is objectionable because the means I use are properly subject to your choice, not mine. In so doing, I exercise despotism over you, and so treat you as though you were dependent on me. The sovereignty principle thus treats wrongdoing and culpability as expressions of a single idea.34 By contrast, if I use or damage what is yours by mistake or accident, you independence can be restored thought a civil remedy that requires me to restore your means, or the proceeds of their use.

### Analytic

#### All action is brought about by the self-reflexive consideration of reasons for action. One cannot reject the authority of reason because demanding a reason for reason is circular. Practical judgments must be true for every agent, since reasons are authoritative judgments of reality that possess no intrinsic quality that would cause them to differ between individuals. This demands respecting freedom unconditionally.

#### First, to value any end, I must value the conditions necessary to will that end—freedom is one of those conditions, since autonomous end-setting requires I be free from another’s control. Willing also means I hold myself to be able to fulfill that end, which requires freedom—that’s why it’s distinct from wishing.

#### Second, all agents determine reasons for action based on practical identities, but all such identities collapse to our human identities, which is to say our own needing of reasons. To coerce is to value humanity merely conditionally, which is a contradiction.

#### Thus the standard is respecting freedom. This is a perfect duty—the NC is libertarianism. This negates since the government would not be legitimate in legislatively restricting end-setting capacity via a handgun ban. Handgun ownership in itself is not a violation of freedom—only the ill-intentioned use of a handgun is. Some people drunk drive and kill others with their cars, but the government would not be justified in banning cars because of that.

## Frontlines

### AT Own Nukes

#### 1] Begs on intuitions which are not justified – maybe it’s good we have nukes, I still win framework so it’s irrelevant

#### 2] Private ownership of nukes is prohibited---

#### A] Nukes create huge environmental damage and radiation that directly harms other people.

#### B] Nukes hold people hostage – since a single explosion can wipe out a city – this is a violation of liberty – this is unique from gun’s because nukes can’t be used discriminately and are qualitatively different from guns for the purpose of defense against private violence

#### Yes guns can be misused and hurt people like nukes, but that just means the *use* of guns need to be regulated --- by their logic, we would ban cars for example because they can be used to run people over --- clearly this doesn’t link into the standard

Ripstein (Arthur Ripstein, “Beyond the Harm Principle,” University of Toronto, http://www.law.utoronto.ca/documents/Ripstein/beyond\_harm\_principle.pdf//FT

Second, it won’t work to claim that I harm you by upsetting you when you learn of my deed, or by leading to fears that people will do this sort of thing to others. As a liberal principle, the harm principle cannot allow this move. If my act itself does no harm, then your fear that I will do it cannot bootstrap it into one, any more than your fear that I will corrupt your character can count as a harm for purposes of criminalization. Too many illiberal consequences would follow if harms could be manufactured in this way.

### AT Ripstein

#### 1. Violates universality—coercion cannot be permissible in merely some instances, i.e. for the purpose of protecting freedom, because in willing such a specific maxim you commit yourself to willing that you have a reason to coerce in general

#### 2. Humanity must be unconditionally valuable—it does not make sense to coerce someone to stop coercion because that is not treating humanity as an end in itself, but rather a fungible good—if freedom matters at all then we must respect it in all instances to avoid contradiction

#### 3. Even if the turn is true, it would be wrong for one individual to coerce another. However, the state is no less of a coercive power—since my vote is marginal and cannot change anything, it is as if I have no stake in the legislative power, which disproves the concept of an omnilateral will.

Anscombe (Modern Moral Philosophy Originally published in Philosophy 33, No. 124 January 1958) \*\*\*bracketed for gendered language\*\*\*

Kant introduces the idea of “legislating for oneself,” which is as absurd as if in these days, when majority votes command great respect, one were to call each reflective decision a [person] made a vote resulting in a majority, which as a matter of proportion is overwhelming, for it is always 1-0. The concept of legislation requires superior power in the legislator. His own rigoristic convictions on the subject of lying were so intense that it never occurred to him that a lie could be relevantly described as anything but just a lie (e.g. as “a lie in such- and-such circumstances”). His rule about universalizable maxims is useless without stipulations as to what shall count as a relevant description of an action with a view to constructing a maxim about it.

#### 4. We have a perfect duty to avoid coercion, as it arises from a contradiction in willing—we are unable to will the maxim of coercion in a world where coercion is universal. However, the obligation of the state to coercively ensure freedom is a mere imperfect duty, since it is an obligatory action and not omission that arises from a mere contradiction in conception. That means since the two obligations are contradictory, universal non-coercion must be preferred.

### AT Reductionism

#### 1. We have a singular will. We cannot will multiple contradictory maxims at the same time—that means our individuality is relevant vis-à-vis the process of end-setting.

#### 2. The fact that I cannot independently control your brain proves that coercion is a thing. Maybe our brains don’t constitute a single stable identity, but there are definitely limits to my brain’s ability to set ends—it is still possible to restrict freedom.

### AT Tailoring Objection

#### Very specific maxims ignore the concept of moral salience—there must be some relevant reason for exceptionally situational rules in the categorical imperative.

Herman (Barbara Herman, “The Practice of Moral Judgment”, *The Journal of Philosophy*, Vol. 82, No. 8 Aug., 1985, pp. 414-43) OS \*\*\*bracketed for gendered language

Now, in order to use the CI as a principle of judgment or assessment, the agent must first produce his maxim. That is, he must formulate a (subjective) principle that correctly describes what he is intending to do and why (for what end and in response to what motive).Since a maxim is a subjective principle of action, it contains as much of the particulars of person and circumstance as the agent judges are necessary to describe and account for [their] proposed action. Rules of relevance will be necessary to determine which facts it is legitimate to include in a maxim, but these are not them- selves moral rules. They will require, for example, that the agent include in [their] action description only those features of the circumstances of action which are conditions of his acting as [they propose]. So the fact that an action is to be performed on a Tuesday is rarely a condition of anyone's acting, and so will rarely have a legitimate place in any maxim. In short, what I have argued here is that, because the CI procedure assesses maxims of action and because maxims contain only those descriptive elements which belong to an agent's conception of his action and circumstances the CI cannot be an effective practical principle of judgment unless agents have some moral under- standing of their actions before they use the CI procedure. I believe there is support for this view in Kant's own examples and in his account of moral education.' But the claim that such prior moral knowledge is necessary follows from the structure of the CI as a practical principle of judgment and not from the correctness of my textual interpretation. In addition to picking out the morally significant features of actions, then, the rules of moral salience (RMS) indicate a burden of justification. The agent in the deceitful-promise example understands that normal prudential or instrumental justifications of actions will not do in the case of deceit. This is the mark of his "con- science." It seems he already knows that deceit in the pursuit of (mere) self-interest is usually not permissible.[He asks "Is it not unlawful and contrary to duty to get out of difficulties in this way?"(G 89/90;422).]So he comes to the CI knowing that, unless his situation is morally exceptional, it will not be judged permissible. Issues of excuse and justification do not enter moral thought only after an action has been done; they are part of the way a normal moral agent explains the permissibility of his actions to himself.

### AT No A Priori Reason

#### Extend Kant 2—our perceptions of the empirical world are not of the things in themselves. When I look at any object, I do not see the object in itself, but rather the object as I myself perceive it. All empirical knowledge must first be filtered through the mind in a way that necessitates a priori reason. This is proven by the fact that all empirical observations implicitly rely on basic a priori truths like math or logical axioms like X is X.

### AT Util

#### 1) Util calc is impossible—consequences span infinitely far into the future, meaning it’s impossible to figure out whether any action is net good or bad.

#### 2) Reason first—to say we don’t like pain is to say we have a reason to act on maxims that avoid pain. To deem an end state valuable is merely to say that it’s rational to want—there are no inherent qualities of end states *in themselves* that can be used to assess their moral value absent our own reasons.

#### 3) A priori knowledge first—it’s used to transform our empirical observations, i.e. aversion to pain, into reasons for action. Pure empiricism is self-defeating because one must use a priori reasoning to justify empiricism.

#### 4) Only Kant explains why we care about things like our preference for happiness—we regard happiness as important because it is important to us, which means its value must stem from the value of ourselves. Happiness only matters because you matter—that means non-coercion comes first.

#### 5) Intersubjectivity collapses to Kant—understanding pain as universally bad requires that we look to other agents, but first we must recognize them as such—that requires we value freedom and autonomy.

#### 6) Intent-foresight distinction

Hegel (George Wilhelm Friedrich Hegel, *The Philosophy of Right*, 1820)

**The will has** before it **an outer reality**, upon which it operates. But to be able **to do this, it must have a representation of** this **reality**. True **responsibility** **is** **mine only** in **so far as the outer reality** **was within my consciousness**. The will, because this external matter is supplied to it, is finite; or rather because it is finite, the matter is supplied. When I think and will rationally, I am not at this standpoint of finitude, nor is the object I act upon something opposed to me. The finite always has limit and boundary. There stands opposed to me that which is other than I, something accidental and externally necessary; it may or may not fall into agreement with me. But I am only what relates to my freedom; and the act is the purport of my will only in so far as I am aware of it. Œdipus, who unwittingly slew his father, is not to be arraigned as a patricide. In the ancient laws, however, less value was attached to the subjective side of the act than is done to-day. Hence arose amongst the ancients asylums, where the fugitive from revenge might be received and protected. 118. **An act**, when it has become an external reality, and is connected with a varied outer necessity, has manifold consequences. These consequences, being the visible shape, whose soul is the end of action, belong to the act. But at the same time the inner act, **when realized** as an end **in the external world**, **is handed** over **to external forces, which attach** to it **something** quite **different from what it is in itself**, **and thus carry** it away into **strange** and **distant consequences. It is the right of the will to adopt only the first consequences, since they alone lie in the purpose.**

#### 7) Logical preeminence—my framework deals with the process of end-setting rather than the content of individual ends. That logically must come first and act as a side-constraint.

#### 8) Act-omission distinction—util leads to infinite obligations because we are constantly responsible for omissions. That means we are always fulfilling an infinitely small percent of all our obligations, so it’s impossible to be moral.

#### 9) Aggregation fails—two migraines don’t equal a headache—different instances of pain and pleasure are not just quantitatively but also *qualitatively* different